

Matter of Cobaugh v New York State Bd. of Parole

2025 NY Slip Op 32698(U)

July 22, 2025

Supreme Court, New York County

Docket Number: Index No. 152046/2025

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

-----X

<p>In the Matter of the Application of SUSAN M. COBAUGH</p> <p style="text-align: center;">Petitioner,</p> <p>For a judgment pursuant to Article 78 of the Civil Practice Law and Rules</p> <p style="text-align: center;">- v -</p> <p style="text-align: center;">NEW YORK STATE BOARD OF PAROLE,</p> <p style="text-align: center;">Respondent.</p> <p>-----X</p>	<p>INDEX NO. <u>152046/2025</u></p> <p>MOTION DATE <u>02/14/2025</u></p> <p>MOTION SEQ. NO. <u>001</u></p>
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**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 34, 36, 38, 40, 42, 44 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, and after a final submission date of May 23, 2025, Petitioner Susan M. Cobaugh's ("Petitioner") Petition to vacate Respondent New York State Board of Parole's ("Respondent") November 5, 2024 decision and ordering a *de novo* parole release interview before a new panel of commissioners is granted.¹

I. Background

On September 23, 2004, Petitioner pled guilty to murder in the second degree of Daniel Herbert ("Mr. Herbert"). Petitioner and Mr. Herbert entered a joint venture, and when Petitioner became skeptical of Mr. Herbert's promises of a return on Petitioner's investment, she had the

¹ After this Decision and Order was drafted, the Court was notified that Respondent's Appeals Unit affirmed the Parole Board's November 5, 2024 decision. However, the Appeals Unit's determination does not change this Court's determination that the Parole Board's November 5, 2024 decision engaged in an impermissibly rote and conclusory analysis of the statutorily enumerated factors, focusing almost exclusively on Petitioner's past crime. The Appeals Unit's decision suffers the same infirmity (*Rossakis v New York State Bd. of Parole*, 146 AD3d 22, 27 [1st Dept 2016]).

joint venture take out a \$7.5 million dollar life insurance policy on Mr. Herbert, with Petitioner as the named beneficiary. She paid John Gradia² \$22,000 to kill Mr. Herbert. Petitioner, Mr. Gradia, and Mr. Gradia's nephew, Jason Branin, drove from New Jersey to Syracuse, New York, and confronted Mr. Herbert at his apartment. Gradia shot Herbert twice, stabbed him over fifty times, and beat him in the head with a blunt object while Petitioner watched. Mr. Herbert was left for dead on the floor. Petitioner was arrested two years later. The District Attorney's office entered a plea deal with Petitioner, and on February 2, 2005, Petitioner was sentenced to 20 years to life. Hon. John J. Brunetti, the judge presiding over Petitioner's sentencing, stated "[Petitioner] orchestrated one of the most premeditated and evil murders we've seen." (NYSCEF Doc. 30 at 39).

During her incarceration, Petitioner claims she has become deeply remorseful for Mr. Herbert's death, and her outlook on life and duty to community has changed for the better. She has a nearly perfect disciplinary record, has earned numerous degrees, and has engaged in advocacy efforts aimed at improving the prison environment. She also completed numerous therapy and rehabilitation programs and has retained employment positions.

On April 4, 2023, Petitioner appeared before Respondent for a limited credit time interview but was denied early release on parole.³ On October 3, 2023, Petitioner appeared for another parole interview but was denied parole again. Petitioner appealed that decision, and on September 23, 2024, the Appeals Unit found that Respondent failed to provide an adequate explanation for its decision and ordered a *de novo* interview.

² While Petitioner was loaning money to Mr. Herbert, she supported herself and her daughter through sex work. Mr. Gradia was one of Petitioner's clients when she was earning money through sex work.

³ The limited credit time interview is a program that allows an incarcerated individual a six-month reduction of earlier than their minimum sentence.

On November 5, 2024, Petitioner appeared for her *de novo* interview. Petitioner presented evidence in support of her parole application including her own letters of remorse, numerous letters of support from professors, members of the community, fellow inmates, a future potential employer, and a supportive housing group where she would live, and numerous professional degrees and licenses she obtained while incarcerated. Petitioner was again denied parole on the same day of her interview. The interview and written decision focused mainly on the orchestrated murder for which Petitioner pled guilty two decades ago. Petitioner filed another appeal of Respondent's decision on February 12, 2025, and two days later filed this Petition asking this Court to vacate Respondent's November 5, 2024, Decision and to order a *de novo* interview. A decision on Petitioner's appeal has not yet been issued, despite four months having passed since the appeal was perfected. Respondent moves to dismiss the petition arguing that Petitioner's claim is not ripe and is therefore non-justiciable, and that even if it was ripe, Respondent considered the required factors under New York Executive Law § 259-i(2)(c)(A).

II. Discussion

A. Exhaust Administrative Remedies

Respondent's argument that Petitioner has failed to exhaust her administrative remedies is moot. The Appeals Unit has issued a decision affirming the Parole Board's November 5, 2024, decision (NYSCEF Doc. 50).

B. Was Respondent's Decision Arbitrary & Capricious?

The Court finds Respondent's decision failed to follow the required procedures provided by New York Executive Law §259-i(c)(A) and 9 NYCRR 8002.2. Respondent's interview and decision focused almost exclusively on the crime committed while failing to address, in a non-conclusory manner, multiple other factors required by statute and supported by evidence presented.

An administrative action is “arbitrary” if it “is without sound basis in reason and is generally taken without regard to the facts” or fails to follow lawful procedure (*Roberts v Gavin*, 96 AD3d 669, 671 [1st Dept 2012] quoting *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]). Parole release decisions will not be disturbed if the Board complied with the required statutory requirements (*Valentino v State Executive Div. of Parole*, 98 AD3d 789, 790 [3d Dept 2012]). In reaching its determination, the law requires Respondent to evaluate the enumerated factors found in New York Executive Law §259-i(c)(A). That provision provides that:

“[d]iscretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such incarcerated individual is released, he or she will live and remain at liberty without violating the law, and that his or her release is not incompatible with the welfare of society and will not so deprecate the seriousness of his or her crime as to undermine respect for law.”

The provision requires Respondent to consider:

“(i) the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interactions with staff and incarcerated individuals; (ii) performance, if any, as a participant in a temporary release program; (iii) release plans including community resources, employment, education and training and support services available to the incarcerated individual; (iv) any deportation order issued by the federal government against the incarcerated individual...;(v) any current or prior statement made to the board by the crime victim or the victim’s representative, where the crime victim is deceased or is mentally or physically incapacitated; (vi) the length of the determinate sentence to which the incarcerated individual would be subject...; (vii) the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney, the attorney for the incarcerated individual, the pre-sentence probation report as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to confinement; and (viii) prior criminal record, including the nature and pattern of offenses, adjustment to any previous probation or parole supervision and institutional confinement.”

While Respondent “is not obligated to refer to each factor, or to give every factor equal weight” it still must “give fair consideration to each of the applicable statutory factors as to every

person who comes before it, and where the record convincingly demonstrates that the Board did in fact fail to consider the proper standards, the courts must intervene (*Rossakis v New York State Bd. of Parole*, 146 AD3d 22, 27 [1st Dept 2016]). Summarily listing institutional achievements without further analysis as to how those achievements factor into Respondents' decision violates the law's requirement that the reasons for denial not be given in "conclusory terms." (*Rossakis, supra*). Likewise, merely reciting Executive Law § 259-i(2)(c)'s language that release would be "incompatible with the welfare of society and would so deprecate the serious nature of the crime as to undermine respect for law" violates the prohibition on conclusory reasons for denying parole (*Rossakis, supra*). Moreover, Respondent may not deny parole based solely on the seriousness of the offense (*Rossakis v New York State Bd. of Parole*, 146 AD3d 22, 27 [1st Dept 2016] citing *Ramirez v Evans*, 118 AD3d 707, 707 [2d Dept 2014]).

Respondent failed to address numerous statutorily enumerated factors. There is no analysis of factor (iii) which requires an examination of Petitioner's release plans. There is no mention of the employment and support programs Petitioner would be enrolled in upon release – in particular employment with Sanctuary for Families' Economic Empowerment Program and a supportive housing program with Providence House's Women's Justice System. Moreover, Respondent considered factor (i) in only the most conclusory fashion. While Respondent claims it considered the education, therapy, and rehabilitation programs Petitioner completed while incarcerated, it provided no meaningful analysis of the impact of these programs. Instead, it merely recited language from New York Executive Law §259-i(c)(A) that "discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duty while confined" (NYSCEF Doc. 12 at 29). Respondent also failed to address in any manner Petitioner's interactions with staff and other incarcerated individuals, making no reference to the letters of

support from multiple college professors, Petitioner's Rabbi, members of the community, and numerous fellow inmates.

Further, the Court finds Respondent failed to comply with 9 NYCRR 8002.2. Although during the interview Commissioner Lee recognized Petitioner's Correctional Offender Management Profiling for Alternative Sanction ("COMPAS") risk and needs assessment scored "low and unlikely...in every category," Respondent's decision engaged in almost no discussion of Petitioner's COMPAS scores, instead merely stating they depart from Petitioner's abscondence risk because she left New York State after committing second degree murder over twenty years ago. Respondent provides no discussion of Petitioner's other COMPAS scores and provides no analysis as to why they believe the progress towards rehabilitation demonstrated by Petitioner over twenty years mitigates her abscondence risk. The transcript of the parole interview further highlights Respondent's "horse blinkered" approach, focusing on Petitioner's crime without sufficient regard for evidence of remorse and rehabilitation. The first fifteen pages of the twenty-six-page long parole interview deal exclusively with questions about the crime committed. Most of the remainder of the interview transcript deals with irrelevant questions, such as where Petitioner was born and how she met Proskauer Rose, the firm representing her.

The statute requires "the prisoner's educational and other achievements affirmatively be taken into consideration in determining whether [s]he meets the general criteria relevant to parole release" (*Rossakis v New York State Bd. of Parole*, 146 AD3d 22, 27 [1st Dept 2016] quoting *King, supra* at 432). However, Respondent focused almost exclusively on the depravity of the homicide committed over twenty years ago with little, if any analysis on how the evidence of Petitioner's rehabilitation and remorse may favor granting parole. Because of this record, the Court is constrained to grant the Petition and order a *de novo* interview. While Respondent suggests

ordering instead that Respondent issue an amended decision providing greater detail, given the almost exclusive focus of the parole interview on the underlying crime, with no regard to Petitioner’s evidence of rehabilitation, the Court grants Petitioner’s request for a *de novo* hearing with a new board.

The Court makes no judgment as to the outcome of the *de novo* hearing, which may conclude Petitioner should not be granted parole. The Court grants the petition solely because the record shows Respondent failed to fulfill fairly its statutorily mandated assessment of enumerated factors. Therefore, Respondent’s November 5, 2024 decision is vacated, and the *de novo* interview in front of a new board must provide a fair and detailed assessment of the statutorily enumerated factors pursuant to Executive Law §259-i(c)(A) and 9 NYCRR 8002.2.

Accordingly, it is hereby,

ORDERED that Petitioner Susan M. Cobaugh’s Petition is granted, Respondent New York State Board of Parole’s November 5, 2024 decision denying Petitioner parole is hereby vacated, and within sixty days of entry of this Decision and Order, Respondent shall provide Petitioner a *de novo* parole release interview before a new panel of commissioners; and it is further

ORDERED that within ten days of entry, counsel for Petitioner shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

7/22/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED DENIED

NON-FINAL DISPOSITION

- GRANTED IN PART OTHER

APPLICATION:

- SETTLE ORDER
- SUBMIT ORDER

CHECK IF APPROPRIATE:

- INCLUDES TRANSFER/REASSIGN
- FIDUCIARY APPOINTMENT
- REFERENCE